

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Service Rules for the 746-764 and ) WT Docket No. 99-168  
776-794 MHz Bands, and Revisions )  
to Part 27 of the Commission's Rules )

To: The Commission

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REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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I. INTRODUCTION

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") respectfully submits these Reply Comments in the above-captioned proceeding.

On June 3, 1999, the Commission released a Notice of Proposed Rule Making ("Notice") seeking comment on the appropriate service rules for the 36 MHz of spectrum that has been reallocated from the broadcast services at 746-764 MHz and 776-794 MHz. On July 19, 1999, numerous parties submitted comments on the Notice, some of which ask the Commission to prejudge the potential uses for this spectrum by setting aside channel blocks for a limited set of "private" users that would continue to receive their spectrum assignments free of charge.<sup>1/</sup>

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<sup>1/</sup> See Comments of Motorola at pp. 12-13; Comments of the Personal Communications Industry Association. See also Comments of the American Mobile Telecommunications Association at pp. 7-10, seeking to set aside spectrum for the limited communications needs of private users despite the fact that this 36 MHz provides significant opportunities for the introduction of third generation technologies to compete in the global marketplace. Comments of US West, SBC Communications, Inc. and Airtouch Communications, Inc.

Nextel submits these Reply Comments to support a fully flexible assignment of this spectrum to fixed, mobile and broadcast users since such an allocation is in the public interest, promotes the Congressional objectives of Section 303(y) as added by the Balanced Budget Act of 1997 ("Balanced Budget Act"),<sup>2/</sup> and moves Commission policy forward toward the 21st Century.<sup>3/</sup> Some commenters would have the Commission apply decades-old spectrum allocation and assignment policies -- crafted long before the Commission's auction authority -- to this spectrum which will not even be available until the 21st Century. Rather than narrowly defining specific, limited uses, the Commission should permit a broad range of services and avoid prejudging the use of these bands.<sup>4/</sup>

## II. DISCUSSION

### A. The Commission Should Eliminate All Spectrum Set-Asides For "Private" Use Give-Aways

As Nextel stated in its Comments in WT Docket No. 99-87, implementing the Balanced Budget Act, setting aside spectrum for private uses and giving it away to those licensees is no longer in the public interest. Given the Commission's authority to use

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<sup>2/</sup> Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997).

<sup>3/</sup> See Comments of Intek Globel Corp. at p. 6 ("...because this spectrum may not be available for practical use for some time, Intek believes that the Commission must ensure that the rules it adopts are forward looking and progressive.")

<sup>4/</sup> See Notice at para. 16 ("We seek to develop service rules that are not based on a Commission prediction of how these bands will ultimately be used, but instead reflect a record that enables us to establish maximum practicable flexibility.")

competitive bidding, the public interest is not served by continuing to assign spectrum via less efficient methodologies. Licensees assigned spectrum free of charge have little incentive to implement cost-effective, spectrum-efficient technology,<sup>5/</sup> they are not necessarily the entity that values the spectrum most highly, and they are not necessarily putting the spectrum to its highest and best use. Moreover, giving away spectrum in this manner subsidizes -- at taxpayers' expense -- the for-profit endeavors of numerous Fortune 500 and other large companies.<sup>6/</sup> Such corporate welfare is not in the public interest.

Motorola asserts in its Comments that private allocations allow these large corporations to operate more efficiently since they have their own private internal communications network.<sup>7/</sup> While this may be true, there is no reason that the "owner" of those private spectrum allocations, i.e., the American public, should not be directly compensated for use of this resource just as the owner of every other resource used in the production of these

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<sup>5/</sup> See Comments of Central and South West Corporation in WT Docket No. 99-87, filed August 2, 1999, at p. 2 ("[Central and South West] is very concerned by suggestions in the Notice that...it might be forced to change frequencies or reengineer its system to employ narrowband equipment.")

<sup>6/</sup> Among the large corporations currently holding licenses obtained at the American taxpayer's expense (and seeking to continue these subsidies in WT Docket No. 99-87) are Ford Motor Company and the Boeing Company, which are ranked second and ninth on the 1999 Fortune 500, respectively.

<sup>7/</sup> Comments of Motorola at p. 13 ("These systems enable commercial operations to run more efficiently. . .").

for-profit goods and services is compensated by the private licensee.

Moreover, in today's commercial wireless marketplace, unlike the marketplace of the 1970's when the Commission crafted the private spectrum allocation, private spectrum users have numerous options for meeting their internal communications needs, including subscribing to any one of several commercial services or continuing to provide their own services.<sup>8/</sup> Additionally, private users could obtain a portion of a commercial spectrum license through disaggregation or partitioning, or a commercial provider could fulfill the private user's specific needs on a set-aside portion of its spectrum. All of these options are available to today, and will be further enhanced by a flexible approach to assigning the 746-764 and 776-794 MHz bands, as proposed by the Commission.

Eliminating all private spectrum set-asides is in the public interest, given the competitive telecommunications marketplace of the 1990's. Hanging on to outdated service rules and spectrum allocation policies does not promote efficient use of the spectrum. Assigning all non-Public Safety spectrum via auctions, on the other hand, promotes an integrated, comprehensive and consistent spectrum management policy that fulfills Congress' objectives in the Balanced Budget Act.

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<sup>8/</sup> See Comments of Southern Communications Services Inc. ("SoCo") at p. 4, noting the particular usefulness of its iDEN system for public safety use ("As demonstrated by the Southern LINC system, advanced SMRs are uniquely suited to serve the needs of Public Safety entities for extremely reliable dispatch and interconnected service.")

B. The Commission Should Auction All 36 MHz For Any Fixed, Mobile or Broadcast Use

Consistent with Section 303(y) of the Communications Act, as added by the Balanced Budget Act, the Commission should assign the 746-764 and 776-794 MHz bands for any fixed, mobile or broadcast use, allowing the applicant to determine whether it will be providing a Commercial Mobile Radio Service, a Private Mobile Radio Service or some other fixed or broadcast service.<sup>9/</sup> Such flexibility is in the public interest, as Congress recognized in adding Section 303(y) to the Communications Act. Moreover, the assignment of such broad-ranging services on these bands would meet the criteria of Section 303(y)(2) as it would be in the public interest, would not deter investment or technological development, and would not result in harmful interference.

First, flexibility will promote the public interest by ensuring that the spectrum is placed in the hands of the party that values it most highly and will put the spectrum to its highest and best use. Second, despite Motorola's claims that flexible use of this spectrum will result in the debacle experienced in the Wireless Communications Services ("WCS") auction,<sup>10/</sup> the

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<sup>9/</sup> Nextel notes that the Comments of SoCo, seeking a set-aside of 18 MHz for Specialized Mobile Radio ("SMR") services, are nonsensical. First, permitting flexible use of the spectrum for any commercial mobile radio service certainly does not prohibit SMR use of the spectrum. Second, limiting its use to "SMR" does not in any way prohibit, for example, a cellular or Personal Communications Services use since the SMR rules already allow broad, flexible spectrum uses. SoCo's assertions are adequately addressed by permitting flexible use of this spectrum.

<sup>10/</sup> Comments of Motorola at pp. 3-4.

Commission will promote technological development by permitting a broad range of services on these spectrum bands. Comparing the 2.3 GHz WCS spectrum to the 746-764 and 776-794 MHz bands ignores the fact that this particular spectrum is well-suited for numerous mobile and fixed applications, similar to those services being provided on the adjacent 800 MHz band, and ignores the technical limitations of the 2.3 GHz band that were created by its proximity to pre-existing incompatible services. Moreover, because the existing broadcast use of this spectrum will be eliminated prior to its reassignment, licensees will be assigned clear spectrum. Thus, the Commission should be able to establish service and technical rules designed to allow for fixed, mobile and broadcast operations that do not interfere with adjacent spectrum uses.

In assigning this 36 MHz of spectrum via competitive bidding, Nextel supports the assignment of two licenses per Major Trading Area ("MTA") -- one 24 MHz and one 12 MHz license.<sup>11/</sup> Such licenses would be particularly suited for applicants seeking to implement flexible, innovate products and services to compete not only in the wireless marketplace but also in the overall telecommunications marketplace, whether providing local loop services, Internet services or other data services. As U.S. West noted, broader bandwidth is necessary, given that today's new technologies "are moving away from the narrow channel structure of present communications systems. . ."<sup>12/</sup> To further ensure that

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<sup>11/</sup> See Comments of U.S. West at p. 4.

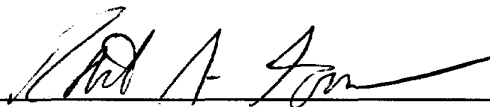
<sup>12/</sup> *Id.*

the most innovative uses are implemented in this spectrum band, the Commission should provide open eligibility, subject only to the limitations of Section 310 of the Communications Act, and permit spectrum disaggregation and partitioning. Each of these service rules will promote efficient spectrum use and the overall competitiveness of the telecommunications marketplace.

### III. CONCLUSION

For the reasons discussed herein, setting aside any part of this spectrum for give-aways to "private users" is not in the public interest. On the other hand, providing the maximum practicable flexible use promotes competition, innovation and efficient spectrum use. Therefore, Nextel respectfully requests that the Commission move away from outdated predictive spectrum assignments, and assign this 36 MHz for any fixed, mobile or broadcast use to any eligible bidder.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, Rochelle L. Pearson, hereby certify that on this 13<sup>th</sup> day of August 1999,  
caused a copy of the attached Reply Comments of Nextel Communications, Inc.  
to be served by hand delivery to the following:

Stanley Wiggins, Esq.  
Policy Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
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A handwritten signature in black ink, appearing to read "Rochelle L. Pearson", written in a cursive style.

Rochelle L. Pearson